



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1873-00

5 September 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552
(b) BUPERSINST 1900.8
(c) MILPERSMAN

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, applied to this Board requesting, in effect, changes in the reason for discharge and reenlistment code.

2. The Board, consisting of Messrs. Dunn and Adams and Ms. Humberd reviewed Petitioner's allegations of error and injustice on 30 August 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 13 November 1993 for four years as a BM3 (E-4). At the time of his reenlistment, he had completed more than six years of prior active service.

d. Petitioner served without incident until 16 November 1995 when he was counseled regarding his failure to be at his appointed place of duty. He was warned that failure to take corrective action could result in administrative separation action. However, he was advanced to BM2 (E-5) on 16 June 1996.

e. Petitioner submitted a special request authorization to extend his enlistment to 12 April 1999 to match his projected rotation date. The chain of command disapproved the request. The reason for disapproval was as follows: "3-M PQS delinquent, very little knowledge on 3-M as per test scores. Continued to receive letters of indebtedness."

f. Petitioner provides documentation that on 30 July 1997 he appeared before an administrative discharge board (ADB). On 3 September 1997, the commanding officer advised the Chief of Naval Personnel that the ADB had found that Petitioner was not a Family Advocacy Program rehabilitation failure, had not committed misconduct due to commission of a serious offense as evidenced by spousal abuse and, accordingly, recommended his retention in the Navy. The commanding officer did not concur with the findings and recommendations of the ADB and strongly disagreed with the recommendation for retention.

g. On 12 September 1997 the Chief of Naval Personnel advised the command that it had reviewed the case and that it would take no action to separate Petitioner since the ADB had found no misconduct of spousal abuse or a Family Advocacy Program failure.

h. On 12 November 1997, Petitioner was honorably discharged at the expiration of his enlistment by reason of "Non-Retention on Active Duty" and assigned an RE-4 reenlistment code. Petitioner's separation evaluation report is not on file in the record. He was paid involuntary separation pay of \$20,005.55.

i. Reference (b) states the narrative reason for discharge, "Non-Retention on Active Duty", is assigned to an individual who fails to meet minimum retention requirements, which includes rate conversion failures and failure to meet high-year tenure requirements. However, reference (c) does not authorize separation for that reason. Separation is authorized by reason of expiration of enlistment or completion of required active service.

j. Regulations require the assignment of an RE-4 reenlistment code to individuals who are not recommended for reenlistment by the commanding officer.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board believes the narrative reason for discharge, "Non-Retention on Active Duty", was inappropriate since he was discharged on the expiration of his enlistment. Therefore, the Board concludes that it would be appropriate and just to correct the narrative reason to show he was discharged by reason of "Completion of Required Active Service" and assigned separation code "JBK" to show he was involuntarily discharged.

It was clear to the Board that Petitioner was not recommended for reenlistment by the commanding officer. The Board is reluctant to substitute its judgment for that of the commanding officer who is on the scene and is best qualified to determine who should be recommended for reenlistment. Absent persuasive evidence to the contrary, the Board concluded that the reenlistment code was proper and no change was warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing he was honorably discharged on 12 November 1997 by reason of "Completion of Required Active Service" vice "Non-Retention on Active Duty" as now shown on his DD Form 214.

b. That he be assigned separation code "JBK" to show he was involuntarily discharged


c. That no further relief be granted.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

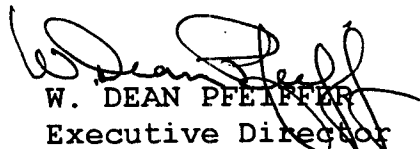
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director